

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

In the Matter of:

**MISSION SPRINGS WATER DISTRICT,
RIVERSIDE COUNTY**

ORDER R7-2022-0045 (Proposed)

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and Mission Springs Water District (individually, the Discharger or MSWD) (collectively, the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves all the violations alleged herein by imposing administrative civil liability against the Discharger in the amount of \$175,000.

II. Background

2. The Discharger operates the Alan Horton Wastewater Treatment Plant (WWTP). MSWD is authorized to discharge treated municipal wastewater pursuant to Waste Discharge Requirements contained in Order R7-2014-0049 (WDRs), adopted by the Regional Water Board on June 26, 2014. Under the terms of the WDRs, MSWD can discharge up to 2.3 million gallons per day of secondary treated municipal wastewater to evaporation/percolation ponds.
3. MSWD discharged wastewater that contains pollutants which can degrade water quality and impact beneficial uses of surface and groundwater within the Coachella Hydrologic Unit.
4. The WDRs Discharge Prohibitions B.2 prohibits the “discharge of treated wastewater at a location other than the designated disposal area.” Discharge Prohibition B.3 provides “the WWTP shall be maintained to prohibit sewage or treated effluent from surfacing or overflowing.” Discharge Prohibition B.5 prohibits the “discharge of waste to land not owned or authorized for such use by the Discharger.”

5. The WDRs also include Discharge Specifications, including Section C.8, which states: “there shall be no surface flow of wastewater away from the designated disposal areas.”
6. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The WDRs are not an NPDES permit.
7. Pursuant to Water Code section 13385 subdivision (a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) per gallon discharged but not cleaned up over 1,000 gallons.
8. The Prosecution Team asserts the violation alleged herein and in Attachment A violated Discharge Prohibitions B.2, B.3, and B.5, as well as, Discharge Specification C.8 of the WDRs, as well as Section 301 of the Clean Water Act, and Water Code section 13376. Pursuant to Water Code section 13385, subdivision (c), the alleged violation is subject to both a per day liability of up to \$10,000 per day of violation, and a per gallon liability for gallons discharged and not cleaned up over 1,000 gallons.
9. Pursuant to Water Code section 13385, subdivision (e) in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
10. The *State Water Board’s Water Quality Enforcement Policy* (Enforcement Policy) was adopted on April 4, 2017. The Enforcement Policy’s effective date is October 5, 2017. The use of the Enforcement Policy’s penalty methodology addresses the factors required to be considered when imposing administrative civil liability. The details of these violations, including the factors required to be considered by Water Code section 13385 and 13327, are set forth in full in the accompanying Attachment A, which is incorporated herein by reference.
11. The Parties have engaged in settlement negotiations and have agreed to the imposition of an Administrative Civil Liability (ACL) of **one hundred and**

seventy-five thousand dollars (\$175,000) in liability against the Discharger pursuant to Water Code section 13385 and Government Code section 11415.60.

12. The Prosecution Team has agreed to reduce the total liability to **\$175,000** in light of settlement considerations as allowed by the Enforcement Policy. Settlement considerations in this matter include equitable factors and evidentiary issues.
13. The Parties have additionally agreed that, in lieu of cash payment, the Discharger will complete a supplemental environmental project (SEP).
14. Based on the information in the record, the Prosecution Team has determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties incorporate the following Recitals and stipulate to the following:

15. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
16. **Administrative Civil Liability:**
 - a. The Discharger hereby agrees to the imposition of an administrative civil liability (ACL) in the amount of **one hundred and seventy-five thousand dollars (\$175,000)** to resolve the violations specifically alleged in Attachment A to this Order.
 - a. **Supplemental Environmental Projects:** In accordance with the State Water Resources Control Board's Policy on Supplemental Environmental Projects, the Parties agree that \$175,000 of the ACL shall be suspended (SEP Amount) pending completion of the SEP as set forth in the attached SEP (Attachment B), which is incorporated herein by reference.
17. **SEP Descriptions:** The Discharger agrees to implement the Mission Springs Water District Septic System Connection Groundwater Quality Protection Program (SEP). The SEP will fund construction of private sanitary sewer laterals from Mission Springs Water District sanitary sewers located in public rights-of-way to the on-site sewer plumbing and abandon septic systems located on private property. The SEP Amount shall be suspended pending completion of the SEP. The complete description, project milestones, budget, and reporting schedule for the SEP is contained in Attachment B.

18. Representations and Agreements Regarding the SEP:

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that the SEP Amount will be used to implement the SEP, as set forth in Attachment B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedules and budgets set forth in Attachment B, represents a material condition of this settlement of liability between the Discharger and the Regional Water Board.
 - b. The Discharger agrees to (1) spend the SEP Amount as described in this Stipulated Order; (2) have certified, written reports provided to the Regional Water Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) submit a final completion report for the SEP by February 1, 2024, each of which will include a certification by a responsible official, signed under penalty of perjury, that the City followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act.
 - c. The Discharger further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the SEP at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.
19. **SEP Amount:** The parties agree that, in accordance with the State Water Board's Policy on Supplemental Environmental Projects (SEP Policy), 100% of the total liability in this matter shall be directed to the SEP because it is a project that is located in and/or benefits a disadvantaged community. Further details about how the SEP benefits a disadvantaged community are articulated in Attachment B.
20. **SEP Oversight Costs:** Regional Water Board staff will oversee implementation of the SEP. The Discharger is responsible for any charged costs for such oversight, which are not included in the SEP Amount. The Regional Water Board's oversight tasks will include, without limitation, reviewing and evaluating progress reports, reviewing final completion reports, and communicating with the Discharger (if needed).
21. **Publicity Associated with the SEP:** Whenever the Discharger, or its agents or subcontractors, publicize one or more elements of the SEP, it shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
22. **Progress Reports and Inspection Authority:** The Discharger has agreed to submit progress reports in implementing the SEP to the Regional Water Board as

described in Attachment B. The Discharger agrees that Regional Water Board staff has permission to observe and inspect the SEP at any time without notice.

23. **Time Extension for SEP:** The Executive Officer of the Regional Water Board may extend the SEP deadlines contained in Attachment B of this Stipulated Order if the Discharger demonstrates delays from unforeseeable circumstances, provided that the Discharger continues to undertake all appropriate measures to meet their deadlines. If supply chain or delivery problems arise and the project is delayed, the parties agree to meet and discuss a reasonable extension to complete the project until those issues are resolved. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or his or her delegate must be in writing.
24. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, completion of the SEP, and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further Discharger obligations under this Stipulated Order and dismisses the suspended liability or SEP Amount.
25. **Failure to Expend All Suspended Funds on the Approved SEP:** If the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed SEP by February 1, 2024 (SEP Completion Date), the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the Difference to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 14. Payment of the Difference shall satisfy the Discharger's obligations to implement the SEP.
26. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date and the Executive Officer has not granted an extension pursuant to Section III, paragraph 22, or if there has been a material failure to satisfy a project milestone, a "Notice of Violation" will be issued. As a consequence, the Discharger shall be liable to pay the entire SEP Amount, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone that has an identifiable and stand-alone environmental benefit. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. The amount of the suspended liability owed shall be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended

Liability” before the Regional Water Board or its delegate. Within 30 days of the Regional Water Board’s or its delegate’s determination of the suspended liability assessed, the Discharger shall pay the amount owed to the “State Water Pollution Cleanup and Abatement Account.” The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 15. Payment of the assessed amount shall satisfy the Discharger’s obligations to implement the SEP.

- 27. Replacement SEP:** If there is a material failure, in whole or in part, to perform the SEP described in paragraph 16, due to circumstances beyond the control of the Discharger, and the Regional Water Board does not move to collect the Payment of Suspended Liability amount as provided in paragraph 24, above, the Parties agree that the Discharger may propose a Replacement SEP. Whether there is a material failure to perform the SEP described in paragraph 16 shall be determined by the Executive Officer. The Discharger shall have 60 days from the date of the Executive Officer’s determination to propose a Replacement SEP. The cost of the Replacement SEP shall be for the entire SEP amount, or, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided in paragraph 17 for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Regional Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy, and shall be completed within 36 months of the Regional Water Board’s or its delegee’s approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complied with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a “Notice of Failure to Complete SEP” as described in paragraph 25. The Discharger shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.
- 28. Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members, or its staff be held as parties to, or guarantors of, any contract entered into by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

29. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding regulations.

30. Party contacts for communications related to this Stipulated Order:

For the Regional Water Board:

Jose Cortez
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Phone: 760-776-8693
E-mail: Jose.Cortez@waterboards.ca.gov

For the Discharger:

Arden Wallum, General Manager
66575 Second Street
Desert Hot Springs, CA
92240
Phone: 760-329-6448
E-mail: awallum@mswd.org

31. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel relating to the matters forth herein.

32. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

33. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this

Stipulated Order. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

34. **No Waiver of Right to Enforce:** The failure of the Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. If the Discharger fails to comply with this Stipulated Order, the Regional Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.
35. **Effect of the Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Regional Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.
36. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
37. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
38. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors or any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order,

and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein in this matter; or

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

39. **Waiver of Hearing:** The Discharger has been informed of the rights provided in Water Code section 13323, subdivision (b), and if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption. However, if the settlement is not adopted and if the matter proceeds to the Regional Water Board or State Water Resources Control Board for hearing, the Discharger does not waive its right to a hearing before an order is imposed.

40. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Regional Water Board or its delegate, the Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California superior court and/or any California appellate-level court.

41. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP, except that this covenant is not intended to, and does not, limit the Discharger's rights to sue over other Regional Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the Discharger's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any State agency, or the State of California or its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

42. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.

43. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to

execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.

44. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
45. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
46. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counter parts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
47. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Colorado River Basin Region

By: Original Signed by
Cassandra Owens
Assistant Executive Officer

10/20/2022
Date

Mission Springs Water Agency

By: Original Signed by
Arden Wallum
General Manager

10/20/2022
Date

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Colorado River Basin Regional Water Board. The Colorado River Basin Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
3. The Executive Officer of the Colorado River Basin Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

I, Paula Rasmussen, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order issued by the Colorado River Basin Regional Water Board.

 Paula Rasmussen
 Executive Officer
 Colorado River Basin Regional Water Quality Control Board

 Date

Attachment A: Penalty Methodology

Attachment B: SEP Proposal